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Speedrack Products Group, Ltd. and United Steelworkers of America, AFL-CIO-CLC. Case 10-CA-29200

August 23, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

Pursuant to a charge filed on March 27, 1996, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on May 31, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 10-RC-14124.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 22, 1996, the General Counsel filed a Motion to Transfer Case to and Continue Proceedings Before the Board and for Summary Judgment. On July 23, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that the Union was certified, but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

¹ 320 NLRB No. 31 (Dec. 29, 1995) (Chairman Gould concurring and dissenting). Respondent's subsequent motion for reconsideration was denied by unpublished order dated June 20, 1996.

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).²

Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited partnership with an office and place of business in Hamilton, Alabama, has been engaged in the manufacturing of storage racks. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Hamilton, Alabama facility goods valued in excess of \$50,000 directly to points outside the State of Alabama.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 12, 1991, the Union was certified on December 29, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by the Employer at its Hamilton, Alabama facility, excluding office clericals, technical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since December 29, 1995, the Union has requested the Respondent to recognize and bargain, and, at all material times since that date, the Respondent has refused. We find that this refusal constitutes an unlawful

² We also find that no issue warranting a hearing is raised regarding the Respondent's alleged refusal to bargain. Although the Respondent in its answer asserted that it was refusing to bargain until the Board ruled on its request for reconsideration of the certification, it is clear, based on the uncontested allegations in the General Counsel's motion and attached correspondence, that the Respondent continued to refuse to bargain even after the Board denied the Respondent's request for reconsideration.

³ As indicated above, Chairman Gould dissented in the underlying representation proceeding and, contrary to his colleagues, would have overruled the challenges to the ballots of the subject work-release inmates. Accordingly, he does not join here in finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and would deny the Motion for Summary Judgment.

refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Speedrack Products Group, Ltd., Hamilton, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by the Employer at its Hamilton, Alabama facility, excluding office clericals, technical employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Hamilton, Alabama, copies of the at-

tached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 27, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 23, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our Hamilton, Alabama facility,

excluding office clericals, technical employees, professional employees, guards and supervisors as defined in the Act.

SPEEDRACK PRODUCTS GROUP, LTD.